

**Summary of Twelfth Negotiation Session on
New Water Supply Agreement**

Date of Session: September 22, 2003
Place: Santa Rosa Laguna Pumping Plant
Time: 9:00 AM – Noon

Parties Present and Represented:

Cities: Cotati, Petaluma, Santa Rosa, Sonoma and Windsor.
Special Districts: Sonoma County Water Agency and North Marin, Marin Municipal
and Valley of the Moon Water District

Attachment A contains complete list of attendees.

Voting Method:

Voting represents the consensus of the ten parties to the negotiation (Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Windsor, Forestville Water District, North Marin Water District, Marin Municipal Water District (MMWD) and Valley of the Moon Water District). Each of the ten has one vote to cast pursuant to the rule adopted by the WAC at its meeting of September 9, 2002, namely:

- Decision making style: Consensus (defined as all parties agreeing they are either (a) for an issue (thumbs up), (b) can live with it (thumbs horizontal) or (c) opposed (thumbs down). Vote results are reported when taken as (a/b/c).
- If parties can't come to consensus, table the issue and deal with it at the end of the negotiation.

Status of Response from MMWD to WAC Letter:

Ron Theisen reported that the MMWD Board had rescheduled discussion of the letter at its October 1, 2003 meeting.

Review of Part 5 – Water Advisory Committee (Governance Issues):

John Nelson presented the final language with edits for the parties approval (see Attachment B) and it was approved 8/0/0.

Continued Negotiation of 21 Key Issues in Contention between SCWA and WAC:

The parties then moved on to the Key Issues in Contention, focusing attention on the language suggested by John Nelson in the following attachments based on discussions at the prior negotiation session: (1) Water Management and Watershed Planning and

Restoration Provisions (Attachment C), (2) New Facilities (Attachment D, and (3) Recycled Water/Local Supply Projects (Attachment E).

(1) Water Management and Watershed Planning and Restoration Provisions:

Prelude to the discussion, John Nelson reviewed Attachment F entitled “Historic Sources and Use of Funds Pertaining to the Russian River Watershed and Watershed Projects Pursuant to the Eleventh Amended Agreement”. He explained the interrelationship of the Russian River Projects Fund and O&M Fund and purposes for which funds could be spent. He noted that the Eleventh Amended Agreement states fishery enhancement costs are one of the allowed purposes for which Russian River Projects Funds can be used.

John Nelson presented some approximate figures on fisheries/ESA funding and expense (these have been made more specific here based on data available from SCWA’s controller). In FY 2002-03, SCWA received \$9.6 million as its share of the Sonoma County-wide 1% property tax and distributed same as follows: Flood Control - \$5.2 million, Spring Lake Park - \$1.1 million, and Agency General Fund \$3.3 million. In the same fiscal year, the Agency transferred \$2.6 million from the General Fund to the Russian River Projects Fund. The controller reports the source of this transfer amount was property taxes derived from SCWA’s share of the 1% countywide tax. For the prior 7 fiscal years, SCWA transferred an average of \$0.83 million per year from its General Fund to the Russian River Projects Fund. Other significant annual deposits to the Russian River Projects Fund are in-lieu taxes paid by NMWD and MMWD. In FY 2002-03 these amounted to \$0.81 million. In FY 2002-03 fishery enhancement and ESA related costs dominated Russian River Project Fund expenditures – amounting to just over \$3 million dollars (includes Recovery Plan and Conservation Hatchery, Crocker Creek Fish Passage and Mumford Dam Fish Passage items). Additional ESA related expense is also being charged to the O&M Fund (\$0.7 million was the projected amount presented in the FY 2003-04 year budget).

John Nelson then presented a method for dealing with environmental, ESA and watershed planning and restoration costs – namely to create a new uniform charge called the Watershed Planning and Restoration Charge which would be budgeted to be sufficient to meet annual expenditures. He noted this charge would replace the “Environmental Charge” proposed by the SCWA. He recommended that proceeds of the new charge be deposited in the Russian River Projects Fund. He noted to achieve equitable payment from NMWD and MMWD that the current \$20 cap on in-lieu payments these tow out of county contractors make to the Russian River Projects Fund would have to be deleted. If MMWD were not a signatory to the proposed new agreement, the \$20 cap recited in the Agreement of Sale of Water Between SCWA and MMWD would have to be deleted. He noted that the MMWD agreements terminate in June 2014 but have renewal clauses that allow for a change in rates.

Chris DeGabriele stated that the Russian River Projects Charge was initiated to maintain equity between Marin County and Sonoma County beneficiaries of the Russian River Projects. He said that NMWD will pay its fair share of ESA and other regulatory

compliance costs and that these are not now clearly defined as eligible for payment out of the Russian River Projects Fund. He recommended that a new charge be developed to pay annual costs of ESA and other regulatory compliance costs and that it be separate from the Russian River Projects Fund and Russian River Projects Charge. He said that additional accountability would be achieved with this approach.

Ensuing discussion focused on the need to maximize the share of Sonoma County general tax that the SCWA deposits annually in the Russian River Projects Fund in order to more fairly distribute the cost of ESA compliance to all benefited parties. The example was given that if a \$100+ million pipeline is necessary to eliminate high flows in Dry Creek that all Russian River water (surface and ground water) from Lake Mendocino to the mouth of the River benefit as the high flows would be less if it were not for the County's policy to preserve Lake Mendocino Water it controls for water uses – primarily agriculture, that is situated upstream of the mouth of Dry Creek and requirement to meet certain minimum flows in the Russian River. Likewise, agriculture irrigation on the watershed downstream of Warm Springs Dam, including the main stem of the Russian and all tributaries thereto all contribute to the need for and benefit from high flows in Dry Creek. The need for the SCWA's upcoming Biological Assessment to identify not only costs but also beneficiaries and a fair mechanism for distributing costs was noted. Mike Thompson said he did not know if the SCWA's biological assessment or Section 7 process will identify beneficiaries of ESA mitigations proposed or allocation of costs but said he would check into it and report back. The idea of a replenishment assessment charge to all benefiting water users/parties was discussed. WAC representatives expressed reluctance to discuss the proposed new charge until more specifics on the need and cost sharing were available.

Edits/modifications of the language presented were suggested but not voted on. These included:

- Objection to the determination of fund needs being solely left up to the SCWA (Section 1.1, last sentence).
- Need to clarify or expand "Russian River Customers" to include other benefited parties not covered in the list shown in Section 2.8 (a).

Pam Torliatt objected to Section 2.8 (c) that allows SCWA to carry out a watershed project or activity that benefits one or more Water Contractors and said she would report back at the next session as to the City's official position on this. Mike Healy suggested the language be revised along the line as shown below:

2.8 (c) The Agency may carry out projects and activities within the scope of subsection (a) above that primarily or exclusively benefit one or more water contractors, provided (1) such projects and activities are approved by the Water Advisory Committee, (2) the Agency identifies the benefited water contractor(s) and (3) that each water contractor entering into an agreement with the Agency for such project or activity agree to pay supplemental charges as approved by the Agency and the Water Advisory

Committee to defray all or, [in the case where grants, contributions in aid of construction or other sources of funding are available](#), a portion of the cost of the project or activities.

John Nelson was asked to revise the language and present a flow chart of watershed funding relationships at the next session.

(2) Addition of New Facilities:

At the last session an ad hoc committee comprised of WAC representatives Miles Ferris, Chris DeGabriele and Lee Harry and Pam Nicolai was formed to make recommendations on the New Facilities section including: (1) how water/capacity that may be made available by such projects should be addressed in the water shortage allocation procedures; and, (2) addressing the issue as to whether a new class of water should be created. John Nelson noted that the City of Cotati's representative also want to serve on this committee. Virginia Porter noted that the City of Santa Rosa Attorney reports that the Brown Act threshold for noticing an ad-hoc committee meeting is the presence of a quorum of WAC representatives and since there are 8 WAC representatives, 5 or more representatives present at a meeting would require notice. She noted Randy Poole had stated he did not wish to meet in public regards the detailed matters anticipated for discussion by committee. Pam Torliatt said Petaluma also wants to be on the committee and suggested the committee meet on the matter even if the SCWA choose not to participate. Virginia Porter said she would take care of noticing the meeting. John Nelson noted only one Water Contractor had responded with updated information on existing and projected local supply capability and requested the information be provided. It was suggested that data in the 2000 Urban Water Management Plan be used so as not to hold up work of the committee.

(3) Recycled Water/Local Supply Projects:

John Nelson reviewed the proposed new language and noted that in an effort to close on this section, Mr. Poole has agreed to define the 7,500 ac-ft recycled/local supply project offset water as a goal rather than a requirement. He noted only one water contractor had provided updated information on existing recycled water use and use forecast for the next 10 years. He asked water contractors to provide information.

Concerns concerning the proposed new language were raised as follows:

- Sanitary Districts need to be brought into the financing of recycled water projects.
- Each WAC participant should be able to get contributions back on local projects.
- Local recycled projects were not as feasible in some areas (MMWD and Cotati) as in others.
- It is not clear whether local supply projects would be limited to standby use or could be placed on line to meet new demand.
- Recycled/Local Supply Charge should be subject to examination and possible termination after 10 years.

- Inclusion of SCWA sponsored recycled projects – particularly WAC responsibility for O&M expense not covered by project revenues.
- How water from recycled water and local supply projects would be accounted for in entitlements and allocation of water during a shortage.
- By consensus it was agreed that some examples needed to be presented.

Chris DeGabriele noted it was important to bear in mind and get the word out that available storage on the Russian River is 367,500 ac-ft per year and are more than adequate to meet the future needs of the Water Contractors and that the challenge is to construct facilities to deliver the water, provide for reasonable mitigations and obtain water right permit adjustments in a timely fashion.

The WAC asked for some examples of recycled projects (both local and SCWA sponsored). Mike Thompson and John Nelson said they would present some at the next session.

Other Business:

Chris DeGabriele suggested the WAC take stock of the negotiation process at the next session and consider whether or not it wishes to proceed with the current approach or consider an alternative course.

Follow-up Tasks for Next Session

1. Recap of September 22, 2003 Negotiation Session (Nelson)
2. Response from MMWD re letter form WAC (Nicolai)
3. Continued Negotiation of Key Issues in Contention between WAC and Agency:
 - a. Waster Management and Watershed Planning and Restoration:
 - (1) Flow chart showing relationship of watershed funding. (Nelson)
 - (2) Feedback from SCWA re. identification of beneficiaries and allocation of costs for proposed ESA mitigation actions/projects (Thompson)
 - (3) Feedback from City of Petaluma representative re. Section 2.8 (c)
 - (4) Revised language (Nelson)
 - b. Addition of New Facilities (feedback from meeting of ad hoc committee)
 - c. Recycled Water and Local Supply Projects:
 - (1) Review examples of recycled water projects (local and SCWA sponsored) (Thompson and Nelson)
 - (2) Update on survey results (Nelson)
 - (3) Consider language revisions.
4. Discuss negotiation progress and methodology to date and determine whether to continue with present approach or an alternative approach. (Chair).

Next Negotiation Session

Time and Date: 9:00 AM-12:00 PM, October 27, 2003
 Place: Santa Rosa's Laguna Treatment Plant

Attachments:

- A List of Attendees, Sept. 22, 2003 Negotiation Session
- B Part 5 – Water Advisory Committee
- C Water Management and Watershed Planning and Restoration Provisions
- D Addition of New Facilities Provisions
- E Recycled Water/Local Supply Project Provisions
- F Historic Sources and Use of Funds Pertaining to the Russian River Watershed and Watershed Projects Pursuant to the Eleventh Amended Agreement

Attachment A

Attendees Of Water Advisory Committee Negotiation Meeting For September 22, 2003

Attendees: Chris Sliz, City of Santa Rosa
Jane Bender, City of Santa Rosa
Virginia Porter, City of Santa City
John Nelson, JONWRM
Chris DeGabriele, North Marin Water District
Syed Rizvi, North Marin Water District
Toni Bertolero, City of Cotati
Janet Orchard, City of Cotati
Ron Theisen, Marin Municipal Water District
Steve Phelps, Marin Municipal Water District
Lee Harry, Valley of the Moon Water District
Al Bandur, City of Sonoma
Mike Ban, City of Petaluma
Steve Simmons, City of Petaluma
Pam Torliatt, City of Petaluma
Mike Healy, City of Petaluma
Mike Thompson, Sonoma County Water Agency
Matt Mullan, Town of Windsor
Paul Berlant, Town of Windsor

Public Attendees: Brenda Adelman, RRWPC
Tom Yarish, Friends of the Esteros
Bob Anderson, United Winegrowers